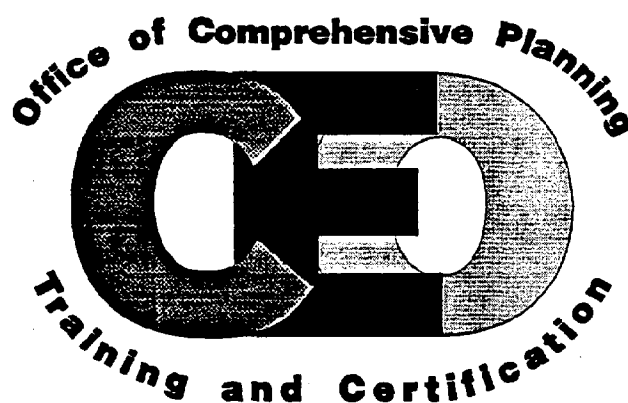


# Municipal Code Enforcement Officers

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## Training and Certification Manual

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Maine Department of  
Economic and Community Development

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## UNDERSTANDING SHORELAND ZONING

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## ACKNOWLEDGEMENTS

The following documents were used in the preparation of this manual:

DEP ISSUE PROFILE Mandatory Shoreland Zoning Act, August 1990;

Mandatory Shoreland Zoning Act, Title 38, Sections 435-449 M.R.S.A. (last ammended and approved April 6, 1990) as prepared by DEP Shoreland Zoning Unit.

State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, DEP, March 24, 1990.

## EDUCATIONAL OBJECTIVES

These educational objectives are provided as a source of guidance to the reader. They are intended to help the reader focus on important issues contained within the manual. They should be used for the purpose of review in preparing for the Level 1 certification examination.

1. Know the purpose of the Shoreland Zoning Act.
2. Know the relationship between the Shoreland Zoning Act, DEP's model ordinance, and the locally adopted ordinance.
3. Know the applicability of the Act.
4. Know the role of a municipality as defined by the Act.
5. Know when and by whom the Code Enforcement Officer is appointed, under the Shoreland Zoning Act.
6. Know the role of the State as defined by the Act.
7. Know the special provisions which override local ordinances contained in the Shoreland Zoning Act.
8. Know the powers and duties of the CEO, under the Shoreland Zoning Act.

## INTRODUCTION

The State of Maine is trustee of all waters of the State and responsible for public health, safety and the general welfare. In keeping with these responsibilities, the State has declared that it is in the public interest to establish zoning and land use controls along shoreland and wetland areas. The Mandatory Shoreland Zoning Act was enacted by the Legislature in 1971. It is implemented through local zoning ordinances adopted, administered, and enforced by municipalities with technical assistance from the Department of Environmental Protection. A large share of the success of the law will depend upon the efforts of Code Enforcement Officers throughout the state working to implement their local ordinance in keeping with the intent of the Act. A functional understanding of the components of the law is crucial to the ability of Code Enforcement Officers to carry out the every day tasks of implementing their local shoreland zoning ordinance.

## REVIEW OF THE MANDATORY SHORELAND ZONING ACT

Zoning and land use controls enacted to carry out the mandates of the Shoreland Zoning Act will preserve the integrity of wildlife habitat, protect existing shoreland uses and prevent new uses from being located where flooding and accelerated erosion will cause detrimental effects, prevent and control water pollution which endangers fish and wildlife and maritime industries, protect shoreland areas, including wetlands, by controlling placement of structures and other land uses, and preserve natural beauty and open space. In addition, shoreland adjacent to significant river segments is subject to more stringent regulation.

Pursuant to the Mandatory Shoreland Zoning Act, the Board of Environmental Protection has adopted minimum guidelines for municipal zoning and land use controls. These are the "State of Maine Guidelines for Municipal Shoreland Zoning Ordinances". The Board must update and amend them as necessary and reevaluate and update them at least once every four years. These are minimum guidelines which, if followed, will produce an ordinance which meets the basic requirements of the law.

The Act requires that municipalities prepare shoreland zoning ordinances consistent with, or no less stringent than, the minimum guidelines. Coastal communities must prepare ordinances consistent with the coastal management policies cited in M.R.S.A. Title 38 section 1801. The Department of Environmental Protection encourages communities to consider local planning documents and special local conditions which might require different standards than those in the minimum guidelines and to modify the model ordinance to meet the needs of the particular community. Special conditions which give rise to a more unique ordinance must be documented and submitted with the ordinance to the Commissioner of DEP for review and approval. Municipalities may adopt more stringent or very different ordinances which are equally or more effective in achieving the purposes of the Act. Municipal ordinances, amendments and any repeals of ordinances shall not be effective unless submitted to the Commissioner for review and subsequently approved.

The Mandatory Shoreland Zoning Act, as amended through July 14, 1990, is applicable to all land areas within 250 feet of ponds and freshwater wetlands that are 10 acres or larger, rivers with watersheds of at least 25 square miles in drainage area, coastal wetlands, and tidal waters, and within 75 feet of the normal high-water line of a stream. Additionally, significant river segments, as defined by the Act, must be addressed in the local ordinance to protect their natural and recreational features. Zoning for these areas must be at least as restrictive as the guidelines established pursuant to section 445 of the Act. Definitions for all of these protected resources can be found in sections 436-A and 437 of the Act.

All municipalities in the State of Maine have been given the authority and responsibility to adopt, administer, and enforce a shoreland zoning ordinance and map for their areas of jurisdiction. A municipality must adopt a local shoreland zoning ordinance and submit it to the Commissioner of DEP for review. Once the local ordinance has been approved by the Commissioner, the municipality is required to update the local ordinance in order to maintain consistency with state amendments to the Guidelines. A copy of every request for variance under the local ordinance must be forwarded to the Commissioner at least 20 days prior to action by the municipality. To fulfill the enforcement requirements of the Act, municipalities must appoint or reappoint a Code Enforcement Officer by July 1 of each year.

In cases where a municipality has not adopted an ordinance, the Board of Environmental Protection will adopt a suitable ordinance for that municipality. Where a municipality adopts an ordinance that is found to be deficient, the Commissioner may make the ordinance consistent with the minimum guidelines by the imposition of conditions on that locally adopted ordinance. Following the Board's or the Commissioner's action, the ordinance will be effective and binding within the municipality and shall be administered and enforced by the municipality.

The State's primary role is to provide technical assistance in the adoption, administration, and enforcement of local ordinances. The Department of Environmental Protection will address these needs as they arise. The State Board of Environmental Protection must update and amend the minimum guidelines for municipal zoning and land use controls, at least every four years. The Board must ensure that every municipality has adopted a local shoreland zoning ordinance. The Commissioner must review and approve or deny amendments or repeals to municipal ordinances. A copy of each request for a variance under an ordinance approved by the Board, must be reviewed by the Commissioner of DEP. The Commissioner may comment when it is determined that the municipal issuance of the variance would be in noncompliance with the requirements of state law for a zoning variance, or the variance would undermine the legislative purposes declared in the Act. The Commissioner must report to the Legislature biennially on the implementation and impact of local shoreland zoning ordinances.

## PROVISIONS IN THE LAW WHICH OVERRIDE LOCAL ORDINANCES

The specific provisions of the Shoreland Zoning Act that override local ordinances, if the language contained in those ordinances is less restrictive, are:\*

1. All structures, whether principal, accessory, temporary, or permanent, must meet the water setback requirement approved by the Board, except structures requiring direct access to the water as an operational necessity, such as piers, docks, or retaining walls. A structure located next to the water for convenience does not meet the test of operational necessity.
2. Clearing of vegetation and timber harvesting are prohibited within 75 feet of the normal high-water line of a great pond zoned for resource protection.
3. Where clearing of vegetation and timber harvesting are permitted, selective cutting of not more than 40 percent of the trees 4 inches or more in diameter, measured at 4½ feet above ground level, in any 10 year period, is allowed provided that a well-distributed stand of trees and other natural vegetation remains.

Furthermore, to provide for screening between development activities and the water, cleared openings are prohibited within a strip extending 75 feet inland from the normal high-water line, except for approved construction, and a well-distributed stand of vegetation must remain.

4. Municipalities must appoint or reappoint a Code Enforcement Officer by July 1 of each year.
5. Public utilities can not hook up to a new structure in the shoreland zone without written authorization from local officials.
6. Substantial expansions of principal and accessory structures within the shoreland zone must meet the water setback requirements. A substantial expansion is one that increases either the volume or floor area by 30% or more. Structures located less than the required setback from the normal high-water line may not be expanded toward the water.
7. Amendments to ordinances adopted under the Mandatory Shoreland Zoning Act are not effective until approved by the DEP Commissioner.
8. Applications for variances must be forwarded to DEP at least 20 days before a decision is made by the Board of Appeals.

\* Cited from DEP ISSUE PROFILE Mandatory Shoreland Zoning Act, revised August 1990.



## POWERS AND DUTIES OF THE CEO

The Code Enforcement Officer is primarily responsible for successfully implementing the Shoreland Zoning Act. The CEO must have a functional understanding of the Act, the local ordinance and zoning maps in effect in the community in which he or she is appointed. He or she provides information to the public within his/her community related to the Act. When permit applications are accepted a review must be done to check whether shoreland zoning, among other ordinances, will apply to the particular case. He or she must circulate them for review as necessary, and issue or deny permits, as authorized, based upon the application information provided and the CEO's understanding of the Shoreland Zoning Act and the local ordinance and map which has been adopted pursuant to it. The CEO is responsible for follow-up, through inspection to ensure compliance. The CEO must also assume the role of watch dog in responding to complaints of alleged violations and in daily travels around town to ensure protection for sensitive areas. The CEO must keep a complete record of all transactions regarding applications received, permits granted or denied, revocation actions, appeals of decisions, court actions, violations investigated, violations found, and any fees collected. Each year the CEO must submit a summary of this record to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

